

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

EBIN NEW YORK, INC.,

Plaintiff,

v.

SIC ENTERPRISE, INC.; JOHN DOES 1-10  
(said names being fictitious); and JOHN ROE  
CORPS. 1-10 (said names being fictitious),,

Defendants.

Case No. 1:19-cv-01017-PKC-TM

**DECLARATION OF PAUL BOST IN  
SUPPORT OF DEFENDANT SIC  
ENTERPRISE, INC.'S MOTION FOR  
ATTORNEYS' FEES**

I, Paul Bost, declare as follows:

1. I am an attorney with the law firm of Sheppard, Mullin, Richter & Hampton, LLP ("Sheppard Mullin"), counsel to Defendant SIC Enterprise, Inc. ("Defendant") in the above-captioned action. I submit this declaration in support of Defendant's Motion for Attorneys' Fees. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct to the best of my knowledge. If called as a witness, I could and would testify as follows.

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the transcript of Defendant's deposition of Brian Yun taken on July 21, 2021. Mr. Yun testified that he is a sales manager at Plaintiff EBIN New York, Inc. ("Plaintiff").

3. Attached hereto as **Exhibit B** is a true and correct copy of the exhibit marked Exhibit 6 at the deposition of Mr. Yun.

4. Plaintiff never produced documents from any of its retailers in this lawsuit.

5. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the transcript of Defendant's deposition of Dong Ho Hwang taken on July 22, 2021. Mr. Hwang testified that he is a sales representative at Plaintiff.

6. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the transcript of Defendant's deposition of Joon S. (John) Park as Plaintiff's 30(b)(6) representative taken on October 6, 2021. John Park testified that he is a co-founder and president of Plaintiff.

7. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the transcript of Defendant's deposition of John Park taken on November 18, 2021.

8. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from the transcript of Plaintiff's financial expert, Scott Hampton, taken on April 21, 2022.

9. Attached hereto as **Exhibit G** is a true and correct copy of my March 11, 2019 letter to Joshua Lim, former counsel for Plaintiff, responding to Mr. Lim's cease and desist letter sent on Plaintiff's behalf.

10. Attached hereto as **Exhibit H** is a true and correct copy of Plaintiff's complaint filed against PNM Trading, LLC, Case No. 1:21-cv-01840-JPB (N.D. Ga. May 4, 2021). Pursuant to the Plaintiff's and Defendant's stipulation of June 6, 2022 (Dkt. 107 at ¶ 10), Plaintiff and PNM Trading, LLC agreed to stay this case pending the adjudication of Plaintiff's and Defendant's summary judgment motions. A true and correct copy of the order granting this stipulation is attached hereto as **Exhibit I**.

11. Attached hereto as **Exhibit J** is a true and correct copy of Plaintiff's complaint filed against Tom Trading, LLC, et al., Case No. 4:21-cv-01962 (S.D. Tex. June 6, 2021). Tom Trading, LLC filed to stay that action pending the final adjudication of this case, which motion was granted. A true and correct copy of the order granting this motion is attached hereto as **Exhibit K**.

12. Attached hereto as **Exhibit L** is a true and correct copy of Plaintiff's second complaint filed against Young Chul Lee, et al., Case No. 2 :17-cv-13509-JMV-MF (D.N.J. Apr. Oct. 15, 2019). The parties to this case filed a stipulation of dismissal on October 13, 2022.

13. Attached hereto as **Exhibit M** is a true and correct copy of Plaintiff's complaint filed against Kiss Nail Products, Inc., et al., Case No. 2:23-cv-02369-ES-JRA (D.N.J. Apr. 28, 2023).

14. Attached hereto as **Exhibit N** is a true and correct printout of <https://www.kissusa.com/collections/hair-care> on October 3, 2023 reflecting Kiss Nail Products, Inc.'s sale of edge control products in a clear double layer container ("CDLC").

15. Attached hereto as **Exhibit O** is a true and correct copy of Plaintiff's complaint filed against Guangzhou Yongbang Biotechnology Co. Ltd. d/b/a Goiple, Case No. 2:23-cv-03439-MEF-JRA (D.N.J. June 23, 2023).

16. Attached hereto as **Exhibit P** is a true and correct copy of Plaintiff's complaint filed against R&B Collection Inc., Case No. 1:23-cv-04201 (D.N.J. Aug. 4, 2023).

17. Attached hereto as **Exhibit Q** is a true and correct copy of an office action issued by the U.S. Patent & Trademark Office refusing Plaintiff's application to register BRAID FORMULA on the Principal Register because the term "merely describes a characteristic of applicant's goods." Plaintiff amended its application to seek registration on the Supplemental Register.

18. Attached hereto as **Exhibit R** are true and correct copies of invoices sent to Defendant reflecting the following: the date on which each task related to the prosecution of this action was performed; the Sheppard Mullin attorney, paralegal, or professional that performed the task; the time (in hours and tenths of hours) expended by that attorney, paralegal, or professional

on the task; the hourly billing rate of the attorney, paralegal, or professional; the fees billed for the time spent on that task; and description of the task (redacted in some cases to preserve attorney-client privilege). Also redacted are billing entries relates to other matters, including the PNM Trading, LLC and Tom Trading, LLC matters, on which matters Defendant incurred fees defending its distributors. All Sheppard Mullin attorneys, paralegals, and professionals involved in the representation of Defendant in this action kept contemporaneous records of their work on this matter, which were used to generate these invoices.

19. Attached hereto as **Exhibit S** is a true and correct printout of Jill Pietrini's biography from Sheppard Mullin's website. Ms. Pietrini is lead counsel for Defendant in this case. Ms. Pietrini billed Defendant at \$695/hour. Ms. Pietrini billed 341.9 hours in this case. Ms. Pietrini is a highly respected member of the legal community and, specifically, the intellectual property community. Ms. Pietrini began practicing intellectual property law in 1988 and has been lead counsel in hundreds of trademark-related actions in federal courts and the Trademark Trial & Appeal Board. At her prior firm, Manatt Phelps & Phillips, LLP, Ms. Pietrini was co-chair of the firm-wide Intellectual Property practice group from 2000 until her departure to Sheppard Mullin in December 2011. Her practice encompasses the full breadth of intellectual property law, with focus on trademarks, copyrights, and unfair competition. Ms. Pietrini is a sought-after lecturer on intellectual property law and expert source for the media, including major print publications and national broadcast outlets, and has testified as an expert witness on trademark law in federal court. Among other honors, Ms. Pietrini has been named on multiple occasions a "Litigation Star" by Benchmark Litigation, an IP Star by Managing IP Magazine, and of the Best Lawyers in America by Best Lawyers. Ms. Pietrini has received the highest professional rating (5 out of 5) in the Martindale-Hubbell Law Directory.

20. Attached hereto as **Exhibit T** is a true and correct printout of my biography from Sheppard Mullin's website. I billed Defendant at \$555/hour. I billed 940.3 hours in this case. I have been responsible for the day-to-day management of this action. I have practiced intellectual property law since 2008. I have lectured on intellectual property matters, including at the Beverly Hills Bar Association, the San Diego Association of Corporate Counsel, Mattel, Amazon, and Dentsu. I was the chair of the Copyright Committee for the Los Angeles Intellectual Property Law Association from 2015-2017, and was a member of the Right of Publicity Committee for the International Trademark Association from 2020-2021. I have been counsel in dozens, if not over a hundred, trademark-related actions in federal courts and the Trademark Trial & Appeal Board.

21. Other attorneys at Sheppard Mullin have performed legal work material to Defendant's success in this case. Specifically, Ms. Pietrini and I have been assisted by partner Theodore Max, our local counsel in Sheppard Mullin's New York office; Hyo Jin Paik, our primary associate who also is fluent in Korean, a critical value-add in this case; Bradley Rank; Tyler Baker; Timothy Kim; and Evelyn Tan. Attached hereto as **Exhibit U** are printouts of Mr. Max's, Ms. Paik's, Mr. Rank's, and Mr. Baker's biographies, respectively, from Sheppard Mullin's website. Mr. Kim is now counsel at Tesla; attached hereto as **Exhibit V** is a printout of his LinkedIn profile. Summer associates Ramchandra Reddy and Marikate Hulbutta also provided material assistance in this case.

22. Paralegals and other support staff at Sheppard Mullin also performed legal work material to Defendant's success in this case. Specifically, paralegals Monica Danner, Adalberto Huerta, and Ryan Hudson; litigation support team member Michael Munroe, with additional assistance from Esther Chew, Son Dinh, Trish Zaheer, Steven Molina, Lauren Doucette, Dmitry Iofe, Stacey Crocker, and Leigh Ann Tencz; and librarians Hazelle Luciano, Scott Wales, Daisy

De Anda, Bruce Liebman, and Victor Chavez, assisted with discovery, document production, Relativity database management, docketing, research, preparing exhibits, redactions, and other non-administrative tasks. Ms. Danner has 19 years of experience as an intellectual property and litigation paralegal; Mr. Huerta has 19 years of such experience; and Mr. Hudson has 9 years of such experience. Ms. Danner spent significant time compiling evidence of third-party use of the Alleged Trade Dress, a chart of which use was submitted with Defendant's motion for summary judgment. *See* Dkt. 138-13. Mr. Munroe has 22 years of experience in litigation support and eDiscovery, has undergone many trainings related to eDiscovery and Relativity, including "Relativity Searching 101," "Relativity Intermediate Searching," and "Relativity Searching Training – Attorneys Relativity Advanced Searching."

23. Most Sheppard Mullin personnel billed Defendant at a reduced rate to offset the significant financial burden – especially for Defendant, a small business that began in November 2016 – associated with defending the claims brought by Plaintiff. Specifically, Defendant was charged an hourly rate of \$695 and \$555 for Ms. Pietrini and me, respectively. At the time we began billing to this case (February 2019), Ms. Pietrini's scheduled hourly rate was between \$850-\$950 and my scheduled hourly rate was between \$685-\$755.

24. Sheppard Mullin's legal services in this case have included, but were not limited to: appearing at court hearings and mediation conferences; preparing responsive pleadings and counterclaims; preparing Defendant's letter motion to dismiss Plaintiff's amended complaint and motion for leave to file counterclaims; preparing written discovery requests; responding to Plaintiff's 21 interrogatories, 121 document requests, and 14 requests for admission; overseeing Defendant's 25+ document productions, totaling more than 26,000 pages of documents; reviewing Plaintiff's document production of more than 120,000 pages of documents; organizing

and maintaining a Relativity database of more than 140 gigabytes of data; preparing subpoenas to multiple third parties, including Posa Beauty, Ron-M Corporation, Elegance Hair Care and Beauty Supply, Wilson Elser, Henkel Corporation, TSG Consumer Partners, Pierre Fabre USA, Colorproof Haircare, Kao USA, Bosley, and Taien Yang; meeting and conferring on discovery disputes; obtaining declarations regarding use of the CDLC from 4 of the foregoing third parties; preparing and arguing discovery motions; preparing and arguing a sanctions motion; objecting to subpoenas served by Plaintiff on JC1 Trading, Bonanza of USA Corp., J World Trading, BONG Trading, C&CC USA, Inc., PNM Trading LLC, TOM Trading, LLC, Jazz-z Beauty Products, Inc., Eshel International, Inc., Hair Leader, LLC, One Beauty Natural, and WISH Warehouse, LLC; preparing for and deposing 5 fact witnesses and 2 expert witnesses; preparing for and defending the depositions of 4 fact witnesses and 2 expert witnesses; preparing Defendant's summary judgment motion and supporting papers; preparing Defendant's opposition to Plaintiff's summary judgment motion and supporting papers; briefing Plaintiff's motion to file a sur-reply; and preparing and cooperating with Plaintiff's counsel on motions to seal.

25. John Park's deposition – individually and a Fed. R. Civ. P. 30(b)(6) designee – was taken over three days.

26. Defendant's president Joel Lee's deposition – individually and a Fed. R. Civ. P. 30(b)(6) designee – was taken over two days.

27. Sheppard Mullin incurs – and charges to Defendant – a \$20 per gigabyte hosting fee from Relativity. The Relativity database for this case hosts 34.1 gigabytes of Defendant's own data and data collected from third parties; 102.84 gigabytes of data produced to Defendant by Plaintiff; and 3.08 gigabytes of data composed of productions Defendant has made to Plaintiff. This totals 140.02 gigabytes of data. Sheppard Mullin collected most of Defendant's data near

the outset of the case (approximately August 2019), and Plaintiff completed the bulk of its document production around April 2020. Thus, Defendant has incurred monthly hosting costs of approximately \$2,500 - \$2,600 since April 2020.

28. Sheppard Mullin has access to Thomson Reuters Financial Insights, a database that collects, *inter alia*, billing information for timekeepers at law firms in the U.S. This information can be queried, culled, and sorted based on a variety of factors, including location, practice group, peer group, and type of timekeeper. The information in the database dates back to 2020. We queried average standard rates charged by firms in the AmLaw 200 in New York, New York practicing trademark and copyright law for certain types of timekeepers, which resulted in the following results:

<u>Timekeeper</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Equity Partner, 30-34 years of experience	\$907	\$974	\$1,018
Of Counsel	\$711	\$736	\$824
Associate (6th year associate)	\$606	\$659	\$795
Paralegal	\$303	\$330	\$354

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Los Angeles, California on the 4<sup>th</sup> day of October, 2023.

/s/Paul A. Bost

Paul A. Bost

SMRH:4863-5815-8467.1